

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ILUMINADA ORTEGA,

Plaintiff,

-against-

DIMITRI YAGUDAEV, *et al.*,

Defendants.
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POLLAK, United States Magistrate Judge:

ORDER
21 CV 1125 (HG) (CLP)

On July 10, 2024, plaintiff Iluminada Ortega in the above-referenced case filed (1) a motion to withdraw her default judgment motion without prejudice to renew; (2) a motion for settlement approval regarding her claims against Ruben Yeghoyan and Champagne Room BK Inc.; (3) a motion to file the settlement agreement under seal given its confidentiality agreement; and (4) a status report indicating that she is prepared to amend the complaint to allege concrete injury related to her Wage Theft Prevention Act claims. These issues are addressed in turn.

First, the Court grants plaintiff's motion to withdraw her previously filed motion for default judgment, without prejudice, pursuant to the plaintiff's request.

Second, the Court notes that it cannot consider approval of any settlement agreement as to Champagne Room BK. On September 6, 2023, Champagne Room BK filed a Notice of Bankruptcy. (ECF No. 72). Although it appears the bankruptcy case has been dismissed, see In re Champagne Room Bk Inc., No. 23-43187 (Bankr. E.D.N.Y.), there has been no such indication on this docket, and the stay was never lifted as to the corporate defendant. Before this Court can entertain any further action on this case as it relates to the corporate defendant, the stay will need to be lifted and Champagne Room BK will need to retain new counsel or risk default, as corporations are not allowed to proceed *pro se*. See La Barbera v. Federal Metal & Glass Corp., 666 F. Supp. 2d 341, 348 (E.D.N.Y. 2009) (holding "a failure to obtain counsel constitutes a

failure to defend because corporations cannot proceed in federal court *pro se*”). By September 6, 2024, the parties are to submit a status report indicating the status of the bankruptcy proceedings, and, if Champagne Room BK intends to settle the matter or proceed with litigation, it is directed to have counsel enter a notice of appearance or risk default.

Third, pursuant to Cheeks v. Freeport Pancake House, 796 F.3d 199 (2d Cir. 2015), courts in this Circuit are required to review settlement agreements in cases involving claims under the FLSA to determine if the terms are fair and reasonable. Here, the Court has reviewed the proposed settlement agreement which contains a confidentiality provision covering FLSA claims. Courts in this Circuit have rejected settlements which include a confidentiality clause covering FLSA claims. See, e.g., Gallagher v. Mountain Mortg. Corp., No. 22 CV 0715, 2023 WL 5977919, at *9 (E.D.N.Y. Sept. 14, 2023). The parties are advised that this Court will not approve a settlement agreement that contains a confidentiality clause covering plaintiff’s claims regarding wages, hours, and related notices and records.

Finally, if plaintiff desires to amend her complaint, she should prepare a proposed Amended Complaint and serve it on defendants for their review. Defendants are directed to notify this Court within a week of receiving the Amended Complaint and indicate if they object to the proposed amendments. If defendants have no objection, the Court will direct the Clerk of Court to accept the Amended Complaint for filing. If defendants object, then plaintiff must file a formal motion to amend in accordance with Fed. R. Civ. P. 15 and Local Civil Rule 7.1.

The parties are directed to submit a joint status report by September 6, 2024.

Plaintiff shall file proof of service of this Order on defendant Champagne Room BK Inc. by August 9, 2024.

SO ORDERED.

Dated: Brooklyn, New York
August 7, 2024

/s/ Cheryl L. Pollak

Cheryl L. Pollak
United States Magistrate Judge
Eastern District of New York